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ONE HUNDRED TENTH CONGRESS

## Congress of the United States House of Representatives

COMMITTEE ON THE JUDICIARY

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February 20, 2008

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Mr. Fred Fielding  
Counsel to the President  
Office of the Counsel to the President  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, DC 20530

Dear Mr. Fielding:

I appreciate your letter of February 13, 2008, in response to our letter of February 12, 2008.

I would also like to express my appreciation of the White House's decision to permit all Members of the Judiciary Committee to have access to materials that relate to the Administration's warrantless surveillance programs. As you know, the Committee had sought such access for close to a year.

I would like to reiterate my requests for the information and documents requested in our letter of September 11, 2007, and the prior letters attached to our February 12 letter. The requests, by their terms, relate to FISA issues that are within the Committee's jurisdiction.

Although there are numerous other issues raised by your letter, I would like to address two in particular. First, you suggested that certain documents are in the possession of the Department of Justice and that they are thus out of your control. However, a copy of the February 12 letter was sent to Attorney General Mukasey. Rather than requiring us to send multiple letters to all potentially responsive agencies requesting documents on FISA, I am hopeful that the White House coordinate the production across agency lines. I am again sending a copy of this letter to the Department of Justice to ensure that the Department has a copy of the request.

Second, you have objected to providing the Committee a DOJ Office of Legal Counsel Memorandum entitled "Authority for Use of Military Force to Combat Terrorist Activities

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Within the United States." In essence, you take issue with the relevance of this document to FISA issues. The requested document by its very title relates to matters within the Committee's jurisdiction. Moreover, according to published reports, this Memorandum provided, *inter alia*, legal justification for the President's claimed ability to conduct certain electronic surveillance activities inside the United States outside of FISA as a form of "battlefield intelligence."<sup>1</sup> Even assuming that this Memorandum posited other supposed military prerogatives within the United States (implicating this Committee's jurisdiction), we remain firm in our conviction that the executive branch should have no hesitancy whatsoever in providing to the Committee and to Congress information and documents that set forth its views as to the scope of the President's Article II Commander in Chief powers within the United States, especially where these claimed powers have direct relevance to the FISA issues under consideration.

We look forward to discussing with you the orderly production of documents responsive to our requests, and look forward to engaging the Administration in a constructive dialogue on legislation that is necessary to protect this nation's security as well as the rights of its citizens.

Responses and questions should be directed to the Judiciary Committee Office, 2138 Rayburn House Office Building, Washington, D.C., 20515 (tel: 202-225-3951, fax: 202-225-7680). If answers need to be presented in a classified setting, we will make appropriate provisions. Thank you for your cooperation in this matter.

Sincerely,



John Conyers, Jr.,  
Chairman

cc: The Honorable Michael Mukasey  
The Honorable Mike McConnell  
The Honorable Lamar S. Smith  
The Honorable Silvester Reyes  
The Honorable Peter Hoekstra

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<sup>1</sup>Charlie Savage, Takeover – The Return of the Imperial Presidency 130-31 (2007).